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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 TONY ALLEN PRESSLER,

Case No. 3:20-cv-00020-MMD-WGC

7 Plaintiff,

ORDER

8 v.

9 DOTTY CASINO, *et al.*,

10 Defendants.  
11

12 **I. SUMMARY**

13 *Pro se* Plaintiff Tony Allen Pressler, who is a pretrial detainee at the Elko County  
14 Jail, brings this action under 42 U.S.C. § 1983. (ECF No. 19.) Before the Court is a Report  
15 and Recommendation (“R&R”) of United States Magistrate William G. Cobb (ECF No. 20),  
16 screening Plaintiff’s First Amended Complaint (ECF No. 19 (“FAC”)), recommending the  
17 Court dismiss certain proposed Defendants with prejudice, dismiss Plaintiff’s proposed  
18 claims without prejudice, and direct closure of this case. Plaintiff filed an objection to the  
19 R&R. (ECF No. 21 (“Objection”).) Because the Court agrees with Judge Cobb’s screening  
20 analysis of Plaintiff’s FAC, is unpersuaded by the arguments Plaintiff raises in his  
21 Objection, and as further explained below, the Court will accept and adopt the R&R and  
22 overrule Plaintiff’s Objection.

23 **II. BACKGROUND**

24 The Court incorporates by reference Judge Cobb’s recitation of Plaintiff’s  
25 allegations in the FAC provided in the R&R, which the Court adopts. (ECF No. 20 at 1-2,  
26 3-5.)

27 **III. LEGAL STANDARD**

28 This Court “may accept, reject, or modify, in whole or in part, the findings or

1 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party  
2 timely objects to a magistrate judge’s report and recommendation, then the Court is  
3 required to “make a de novo determination of those portions of the [report and  
4 recommendation] to which objection is made.” *Id.* The Court’s review is thus de novo  
5 because Plaintiff filed his Objection. (ECF No. 21.)

#### 6 **IV. DISCUSSION**

7 Plaintiff raises three arguments in his Objection. As further explained below, none  
8 are persuasive. Plaintiff first argues that the Court should not adopt Judge Cobb’s  
9 recommendation to dismiss all of Dotty’s Casino’s employees with prejudice as non-state  
10 actors who cannot be sued under Section 1983 because they conspired with police to  
11 violate his constitutional rights, so he can state a claim against them. (ECF No. 21 at 1  
12 (citing *id.* at 7).) “However, private parties are not generally acting under color of state law,  
13 and we have stated that conclusory allegations, unsupported by facts, will be rejected  
14 as insufficient to state a claim under the Civil Rights Act.” *Price v. State of Hawaii*, 939  
15 F.2d 702, 707-08 (9th Cir. 1991) (citation, internal quotation marks and punctuation  
16 omitted). Plaintiff’s allegation in his FAC that the Dotty’s Casino employees he attempts to  
17 sue conspired with the police by passing them false information is too conclusory to allow  
18 the Court to plausibly infer they were acting under color of state law. (ECF No. 19 at 5.)  
19 The Court instead agrees with Judge Cobb that these private actors should remain  
20 dismissed from this case. (ECF No. 20 at 4.)

21 Plaintiff next argues he should not have to wait to bring his Section 1983 claims for  
22 fabrication of evidence, false arrest, false imprisonment, and unlawful search and seizure  
23 until the criminal cases against him either resolve in his favor, or he is able to overturn his  
24 conviction(s). (ECF No. 21 at 1-2.) But this is not the law. (ECF No. 3 at 5-7; *see also* ECF  
25 No. 20 at 5.) Judge Cobb also recommends again dismissing these claims without  
26 prejudice, such that Plaintiff may pursue them in the future if he prevails in the criminal  
27 cases against him, or on appeal. (*Id.*) So Plaintiff may be able to vindicate his rights—just  
28 not yet, and not in this case.

1 Plaintiff finally argues that the Court should permit him to pursue a Sixth  
2 Amendment claim in this case based on the police's seizure of his untainted assets, which  
3 is depriving him of the funds necessary to retain the lawyer of his choice. (ECF No. 21 at  
4 2-4.) While the Court agrees with Plaintiff that he raises a legitimate argument, the Court  
5 also agrees with Judge Cobb that Plaintiff must raise this argument in the criminal cases  
6 pending against him, in an appeal of one of those cases, or in a postconviction  
7 proceeding—not in this case. (ECF No. 20 at 6-7.) The Court accordingly also rejects  
8 Plaintiff's argument on his attempted Sixth Amendment claim.

9 Moreover, to the extent not already clear, the Court agrees with—and expressly  
10 adopts—Judge Cobb's analysis in the R&R. In sum, Plaintiff's objection is overruled, and  
11 the Court will accept and adopt the R&R in full.

## 12 **V. CONCLUSION**

13 The Court notes that the parties made several arguments and cited to several cases  
14 not discussed above. The Court has reviewed these arguments and cases and determines  
15 that they do not warrant discussion as they do not affect the outcome of the issues before  
16 the Court.

17 It is therefore ordered that Plaintiff's Objection (ECF No. 21) to the Report and  
18 Recommendation of U.S. Magistrate Judge William G. Cobb is overruled. The Report and  
19 Recommendation of U.S. Magistrate Judge William G. Cobb (ECF No. 20) is accepted  
20 and adopted in full.

21 It is further ordered that Dotty's Casino and its employees, Chelsea Woten, Roxy  
22 Pete, Ms. Myler, Ms. Harley, Janna Weiber, Derek Hatland, and Lana Kilo Banner remain  
23 dismissed with prejudice as they are not state actors subject to suit under Section 1983.

24 It is further ordered that Plaintiff's claims for fabrication of evidence, false arrest,  
25 false imprisonment, and unlawful search and seizure in his FAC are dismissed without  
26 prejudice, so that Plaintiff can raise them in the future—in the event his criminal  
27 proceeding(s) terminate(s) in his favor or, if convicted, his conviction is invalidated.

28 It is further ordered that Plaintiff's Sixth Amendment claim is dismissed without

1 prejudice so that Plaintiff can raise it in his underlying criminal action, if that action has not  
2 yet been completed, or in an appropriate post-conviction petition (*i.e.*, in a direct appeal or  
3 habeas petition) if it has been.

4 The Clerk of Court is directed to enter judgment accordingly and close this case.

5 DATED THIS 10<sup>th</sup> Day of May 2021.

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A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE